

CANADA

PROVINCE OF QUEBEC
DISTRICT OF SAINT-FRANÇOIS

N°: 450-11-000167-134

SUPERIOR COURT
(Commercial Division)

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, R.S.C.
C. C-36, as amended)

IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:

**MONTREAL, MAINE & ATLANTIC CANADA CO.
(MONTREAL, MAINE & ATLANTIQUE CANADA
CIE)**

Debtor-Petitioner

-and-

**RICHTER ADVISORY GROUP INC. (RICHTER
GROUPE CONSEIL INC.)**

Monitor

-and-

RAVAGO CANADA

-and-

PERFORMANCE PACKAGING INC.

-and-

KAYTEC VYNILE INC.

-and-

BRIGHAM TERMINAL INC.

-and-

FIRST UNION RAIL

-and-

ROYNAT FINANCEMENT

-and-

CANADA PACIFIC RAILWAY COMPANY

-and-

**ATLANTIC AND NORTH-WEST RAILWAY
COMPANY**

-and-

**LAKE CHAMPLAIN AND ST.LAWRENCE
JUNCTION RAILWAY COMPANY**

-and-

ORFORD EXPRESS INC.

-and-

CITY OF LAC-MÉGANTIC

Respondent

-and-

RAILROAD ACQUISITION HOLDINGS LLC

Mise en cause

**MOTION FOR AN ORDER APPROVING AND AUTHORIZING THE
ASSIGNMENT OF CONTRACTS**
**(Sections 11.3 of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36 ("CCAA"))**

**TO THE HONOURABLE JUSTICE GAÉTAN DUMAS OF THE SUPERIOR COURT, SITTING
IN COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF SAINT-FRANÇOIS, THE
PETITIONER RESPECTFULLY SUBMITS AS FOLLOWS:**

RELIEF SOUGHT

1. Montreal Maine & Atlantic Canada Co. ("**MM&A**") hereby requests that this honourable Court render an order approving and authorizing the assignment in favour of and the assumption by Railroad Acquisition Holdings LLC or the Successful Bidder(s) (as these terms are defined in the Bid Procedures ("**Bid Procedures**" approved by this honourable Court pursuant to a judgment rendered on December 19, 2013) of certain contracts to which MM&A is party;

BACKGROUND

2. On August 8, 2013, this Honourable Court issued an order extending the protection of the *Companies' Creditors Arrangement Act* ("**CCAA**") to MM&A pursuant to section 11.02 of the CCAA (as amended on August 23, 2013, the "**Initial Order**");
3. Pursuant to the Initial Order, Richter Advisory Group Inc. (Richter Groupe Conseil Inc.) was appointed as Monitor of the Petitioner (the "**Monitor**") and a stay of proceedings (the "**Stay of Proceedings**") was ordered until and including September 6, 2013 (the "**Stay Period**");
4. The Stay Period has since been extended by order of this Court to January 28, 2014;
5. MM&A's filing under the CCAA was precipitated by the tragic train derailment in Lac-Mégantic on July 6, 2013 (the "**Derailment**"). The Derailment also precipitated the filing of Chapter 11 bankruptcy proceedings by MM&AR in the United States Bankruptcy Court, District of Maine (the "**Chapter 11 Case**");
6. On August 21, 2013, the United States trustee appointed Robert J. Keach to serve as trustee in the Chapter 11 Case (the "**Chapter 11 Trustee**");
7. On September 4, 2013, the Court entered an order adopting the Cross-Border Insolvency Protocol (the "**Protocol**"). In light of the Protocol, the Petitioner and Monitor have conferred with the Chapter 11 Trustee appointed in the Chapter 11 Case regarding the relief sought in this Motion;

8. On October 9, 2013, this Honourable Court authorized MM&A to execute the agreement negotiated by MM&A, the Monitor and the Chapter 11 Trustee with an investment banker, namely Gordian Group, whereby the latter, in accordance with the joint instructions of the Monitor, MM&A and the Chapter 11 Trustee, was to manage a sale process of both MM&A's and MM&AR's assets and business, including to identify potential bidders, to obtain from them expressions of interest and select a stalking horse bidder;
9. Ultimately, MM&A and the Chapter 11 Trustee, with the assistance of Gordian Group and the Monitor, successfully negotiated and concluded a satisfactory stalking horse asset purchase agreement (the "**Stalking Horse APA**") with Railroad Acquisition LLC (the "**Stalking Horse**"), which provides for the purchase by the Stalking Horse of substantially all the assets of MM&A and MM&AR;
10. On December 19, 2013, this honourable Court approved the Stalking Horse APA as well as the Bid Procedures;
11. More particularly, and in order to ensure that MM&A's estate received the highest and best offer for its assets, MM&A was authorized and directed to conduct, together with the Chapter 11 trustee and the Monitor, the competitive bidding process set out in the Bid Procedures and, to the extent that Qualified Bids (as defined in the Bid Procedures) other than the Stalking Horse APA are received before January 17 at 5:00 p.m. eastern time, to conduct, on January 21, 2014, an auction (the "**Auction**") for the sale of its assets;
12. Finally, on December 19, 2013, this Honourable Court ordered that a hearing shall take place on January 23, 2014 in order to authorize and approve the sale of MM&A's assets, pursuant to the terms set out in the Stalking Horse APA or pursuant to the terms of an alternative transaction with the Successful Bidder(s) (as these terms are defined in the Bid Procedures) selected at the Auction, as the case may be;
13. Pursuant to the Stalking Horse APA, the Stalking Horse has requested that certain contracts to which MM&A is a party, including unexpired leases and operating agreements, be assigned to it, the whole subject to the Stalking Horse's right to renounce the assignment in its favour of any such contracts by giving notice thereof to MM&A at least five (5) days before the Closing (as defined in the Stalking Horse Purchase Agreement) (the "**Renunciation Right**");
14. Given the nature of MM&A's business and operations, it is expected that any Successful Bidder(s), other than the Stalking Horse, will also require the assignment in its favour of certain contracts;
15. The Respondents are parties to the contracts that shall be assigned to the Stalking Horse or, potentially, to other Successful Bidder(s), subject to their Renunciation Right (the "**MM&A Assigned Contracts**"), which contracts are listed in **Exhibit R-1** filed in support hereof;
16. In addition, MM&A is party to numerous crossing licenses and similar agreements whereby it grants crossing rights over or beneath specific sections of its railway, subject to the payment of a "rent"; typically in the range of a few hundred dollars per month or per year ("**MM&A Crossing Licenses**"), a list of which is filed in support hereof as **Exhibit R-2**;

17. The Crossing Licences form part of the MM&A Assigned Contracts, subject to the Stalking Horse's or any other Successful Bidder's Renunciation Rights;
18. Given the large number of counterparties to the numerous Crossing Licences and the fact that said counterparties received prior notice as described in paragraph 20 below and have not filed an objection and, in all likelihood, will welcome the assignment of their respective Crossing Licences rather than contest it (and, therefore, risk losing their crossing rights), the counterparties to the Crossing Licences have not been served with the present motion;
19. Furthermore, MM&A is the payee under the Crossing Licences and not the payor; its only contractual obligation being to grant the Crossing Rights. Accordingly, there cannot be any cure amounts payable to the parties to the Crossing Licences;
20. However, all the parties to the Crossing Licences, like the Respondents, received copy of a Notice (the "**Sale Notice**") of (a) sale of substantially all of the assets of MM&A and MM&AR (b) the assumption and assignment of certain executory contracts and unexpired leases and (c) procedure for determining Cure Amounts, whereby they were advised, *inter alia*, of the potential assumption and assignment of MM&A Assigned Contracts and of their obligation to file, on or before January 22, 2014, any objection they may have to such assumption and assignment, failing which they shall be deemed to consent to same, the whole as more fully appears from the said notice and from the certificate of service filed in support hereof *en liasse* as **Exhibit R-3**;
21. There are no monetary defaults under the MM&A Assigned Contracts that are required to be paid pursuant Section 11.3(4) of the CCAA.

GROUNDINGS FOR THIS MOTION.

22. Pursuant to Section 11.3 CCAA, this Court may make an order assigning the rights and obligations of MM&A under the MM&A Assigned Contracts to any person who is specified by this Honourable Court and who agrees to the assignment, on application (the present Motion) by MM&A and on notice to every party to MM&A Assigned Contracts;
23. MM&A respectfully submits that the service of the Notice of Sale to all the parties to the MM&A Assigned Contracts, effected between December 23, 2013 and January 17, 2014 and the service of the present motion, constitutes sufficient and adequate notice of the assignment of MM&A Assigned Contracts ;
24. In deciding whether to make the order requested, this Honourable Court is to consider the following factors:
 - Whether the Monitor approved the proposed assignments;
 - Is there adequate assurance that the person to whom the rights and obligations are to be assigned would be able to perform the obligations;
 - Whether it would be appropriate to assign the rights and obligations to that person;

25. In addition, this Court may not make the order requested unless it is satisfied that all monetary defaults in relation to the agreements to be assigned, other than those arising by reason only of MM&A's insolvency, the commencement of proceedings under the CCAA or MM&A's failure to perform a non-monetary obligation, will be remedied;
26. In the present instance, the Monitor confirmed its agreement with the proposed assignment of MM&A Assigned Contracts;
27. It is respectfully submitted that there is adequate assurance of future performance by the Stalking Horse of MM&A Assigned Contracts. In that respect, prior to the execution of the Stalking Horse APA, MM&A, the Chapter 11 Trustee and the Monitor satisfied themselves of the Stalking Horse's ability to perform all transactions provided for the Stalking Horse APA in that:
- The Stalking Horse is an affiliate of Fortress Investment Group LLP ("**Fortress**") incorporated for the purpose of carrying out the acquisition of MM&A and MM&AR's assets;
 - Fortress is a global investment management firm acting on behalf of over 1,500 institutional investors and private clients worldwide;
 - Fortress confirmed the irrevocable and sufficient capitalization of the Stalking Horse;
28. In any event, the Stalking Horse as the Successful Bidder or any other Successful Bidder (as these terms are defined in the Bid Procedures approved by this Court on December 19, 2013), (in either case, the "**Purchaser**") will be in a much better position to fulfill MM&A's obligations under MM&A Assigned Contracts, on a going forward basis, than MM&A itself since, in the absence of a sale of MM&A's assets and business and of the assignment of MM&A Assigned Contracts as a going concern, MM&A may have to permanently cease its operations and proceed to the liquidation of its assets;
29. In that respect, it is clearly appropriate to assign the rights and obligations of MM&A under MM&A Assigned Contracts to the Purchaser; As appears from the list of MM&A Assigned Contracts (**Exhibit R-1**), there is no monetary default in relation to any MM&A Assigned Contract that needs to be cured;
30. As of this day, none of the Respondents and none of the parties to the **Crossing** Licences has filed an objection to the assignment of MM&A Assigned Contracts to which they are parties;

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

1. **GRANT** the present Motion;
2. **DECLARE** sufficient the service and notice of the present Motion and no other or further notice is or shall be required;
3. **ORDER** that MM&A is hereby authorized and empowered to transfer and assign the MM&A Assigned Contracts listed in Exhibits R-1 and R-2 filed in support of the present Motion to the Purchaser(s) (as defined in paragraph 28 of the present Motion) as the case may be, and to take any action reasonably necessary to effectuate such transfer

and assignment as contemplated by the Stalking Horse APA (as amended) or the asset purchase agreement of any other Successful Bidder(s);

4. **ORDER** that no payments or other or further consents or approvals of this Court are required for MM&A to consummate and effectuate the transfer and assignment of MM&A Assigned Contracts to Purchaser(s), as the case may be;
5. **ORDER** any anti-assignment or consent-to-assignment provisions in any MM&A Assigned Contracts shall not restrict, limit, impair, prohibit or otherwise affect the assumption and assignment of the MM&A Assigned Contracts. All defaults and all other obligations or liabilities under any MM&A Assigned Contract occurring, arising or accruing prior to the date of the assignment or transfer to the Purchaser shall be deemed to have been cured.
6. **ORDER** that the MM&A Assigned Contracts (which is deemed to include MM&A Crossing Licenses and any other contract added to the schedules of the Stalking Horse APA in accordance with the terms of the Stalking Horse APA where the counterparty thereto was given notice pursuant to the Sale Notice) shall, upon closing of the sale to Purchaser(s), be valid and binding and in full force and effect and enforceable by Purchaser(s) in accordance with their respective terms for the benefit of, the Purchaser(s), notwithstanding any such MM&A Assigned Contract that prohibits, restricts or conditions such assignment or transfer. This Order shall be fully binding upon all counterparties to the MM&A Assigned Contracts, and such counterparties shall completely and in a timely manner perform all of their obligations under the MM&A Assigned Contracts [in the absence of a new default by Purchaser thereunder after closing], including but not limited to consenting to and abiding by: (i) MM&A's assignment of the MM&A Assigned Contracts to Purchaser(s); and (ii) the assignment, encumbrance or pledge by Purchaser(s) of all its rights, title and interest upon Closing of the transaction contemplated with Purchaser(s) in, to and under the MM&A Assigned Contracts as security for any financing or other financial arrangement Purchaser(s) may secure, or to the lenders in such financing or their trustee, designee or assignee obtaining title to the MM&A Assigned Contracts or any of them upon an exercise of remedies or a consensual transfer thereof in lieu of an exercise of remedies. To the extent it is not given in a timely manner prior to closing of the sale to the Purchaser, the consent of the counterparties to each of the MM&A Assigned Contracts is hereby deemed granted as at closing;
7. **ORDER** that MM&A shall be relieved, from the date of its assignment, from any further liability with respect to the MM&A Assigned Contracts;
8. **ORDER** that Purchaser(s) shall not, as a result of such assignment, assume any liability under the MM&A Assigned Contracts for events occurring prior thereto;
9. **ORDER** MM&A to send a copy of the Order to be rendered hereon by regular mail to every party to the MM&A Assigned Contracts;
10. **ORDER** the provisional execution of this Order, notwithstanding any appeal and without the necessity of furnishing any security;

11. **THE WHOLE** without costs, except in case of contestation.

MONTREAL, January 17, 2014


GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

CANADA

PROVINCE OF QUEBEC
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ORFORD EXPRESS INC.

-and-

CITY OF LAC-MÉGANTIC

Respondent

-and-

RAILROAD ACQUISITION HOLDINGS LLC

Mise en cause

NOTICE OF PRESENTATION

TO: **Service list**

Ravago Canada
180 Attwell Drive, Suite 260
Etobicoke, Ontario M9W 6A9

Performance Packaging Inc.
301 Boul. Grand Nord
Cowansville, Quebec J2K 1A8

Kaytec Vynile Inc.
105, boul. Des Industries
Cowansville, Québec J2K 3Y4

Brigham Terminal Inc.
112 Cameron
Brigham, Quebec H0E 1J0

First Union Rail
6250 North River Road
Suite 5000
Rosemont, IL 60018

Roynat Financement
Suite 1500, Métro Tower 1
4710 Kingsway
Burnaby BC V5H 4M2

TAKE NOTICE that the present *Motion for an order approving and authorizing the assignment of contracts* will be presented for adjudication before the Honourable Justice Gaétan Dumas of the Superior Court of Quebec on **January 23, 2014** in room 1 of the Courthouse located at 375 King St. West in Sherbrooke, at 10:00 am or so soon as counsel may be heard

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, January 17, 2014


GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

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ORFORD EXPRESS INC.

-and-

CITY OF LAC-MÉGANTIC

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LIST OF EXHIBITS

- Exhibit R-1: MM&A Assigned Contracts;
- Exhibit R-2: MM&A Crossing Licenses;
- Exhibit R-3: Notice of (a) sale of substantially all of the assets of MM&A and MM&AR (b) the assumption and assignment of certain executory contracts and unexpired leases and (c) procedure for a determining Cure Amounts.

MONTREAL, January 17, 2014


GOWLING LAFLÉUR HENDERSON LLP
Attorneys for Petitioner

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-and-
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MONITOR

-and-
RAVAGO CANADA ET ALS.

RESPONDENT

-and-
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Mise en cause

BL0052

**MOTION FOR AN ORDER APPROVING AND
AUTHORIZING THE
ASSIGNMENT OF CONTRACTS
(Sections 11.3 of the *Companies' Creditors
Arrangement Act*,
R.S.C. 1985, c. C-36 ("CCAA")) AND
EXHIBIT R-1, R-2 AND R-3**

ORIGINAL

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INIT.: PB/cl c/o 3511

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF SAINT-FRANÇOIS

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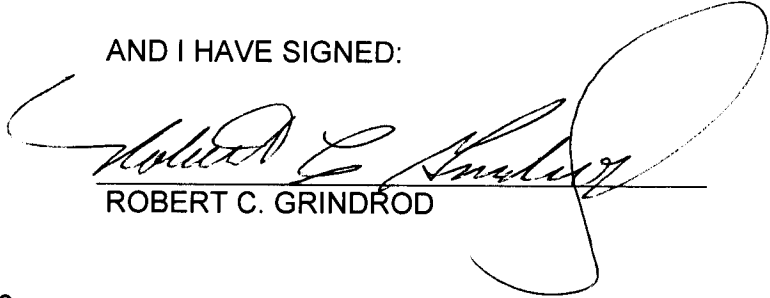
Mise en cause

AFFIDAVIT OF ROBERT C. GRINDROD

I, the undersigned, Robert C. Grindrod, businessman, doing business at 15 Iron Road, Hermon, Maine, USA, 04401, solemnly declare as follows:

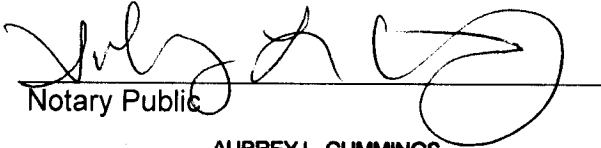
1. I am the President and Chief Executive Officer of Montreal, Maine and Atlantic Canada Co.;
2. All the facts alleged in the present *Motion for an order approving and authorizing the assignment of contracts* are true.

AND I HAVE SIGNED:



ROBERT C. GRINDROD

SWORN TO before me in Portland, Maine
this 20th day of January 2014



Notary Public

AUBREY L. CUMMINGS
Notary Public, Maine
My Commission Expires October 21, 2017

N° 450-11-000167-134

**SUPERIOR COURT
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-and-
RAILROAD ACQUISITION HOLDINGS LLC

Mise en cause

BL0052

AFFIDAVIT OF ROBERT GRINDROD
(re: Motion for an order approving and
authorizing the assignment of contracts)

ORIGINAL

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